



## Children in Immigration Court: Over 95 Percent Represented by an Attorney Appear in Court

Over the past few years, thousands of children—many fleeing horrific levels of violence in Central America—have arrived at the U.S. border in need of protection. Most children are placed in deportation proceedings before an immigration judge, where they will carry the legal burden of proving that they should be allowed to remain in the United States. The government does not guarantee them the right to a lawyer, even if they are alone (i.e., without a parent) and/or unable to hire one. As a result, many children must navigate the complicated immigration system without legal representation.

These children, many of whom experienced trauma, are new to this country and often do not speak English. They face many obstacles that may prevent them from appearing for their court proceedings, including their lack of understanding of the process and their dependence on adults for transportation. Yet, despite these obstacles, a majority of children do attend their immigration proceedings and the attendance rate is especially high (95 percent) for those who are represented by lawyers.

### **EOIR Data Offers Comprehensive Look at Children in Immigration Court**

Syracuse University's Transactional Records Access Clearinghouse (TRAC) obtained government data from the Department of Justice's Executive Office for Immigration Review (EOIR), the agency which runs U.S. immigration courts. This [data](#) examines 181,538 immigration court proceedings begun while a child was under 18, from Fiscal Year (FY) 2005 through March 2016.<sup>1</sup> The information tabulated in TRAC's database includes data on both completed cases, in which there was an official outcome, and cases still pending. The majority of most recently initiated cases, in years 2014 to 2016, are still pending given that some cases take months, or even years, to adjudicate.<sup>2</sup>

The data also is sorted by *in absentia* status, which measures whether a "child was absent at the hearing in which a decision was reached by the Immigration Judge."<sup>3</sup> In cases described as *in absentia*, an Immigration Judge generally has ordered a child removed after a child fails to appear in court. (The immigration statute permits an Immigration Judge to enter a final removal order against a person who fails to appear for his or her hearing).<sup>4</sup> In non-*in absentia* completed cases, an Immigration Judge has issued a decision (e.g., a removal order, a dismissal (or "termination") of the case, or a grant of immigration relief such as asylum) to a child who was present in court. Cases in which children challenge the charge of removability and/or apply for immigration relief typically involve multiple court hearings before the Immigration Judge issues a decision.

The following analysis uses the EOIR data to determine rates of appearance in immigration court based on completed cases or cases where there was some decision in the case, in which the child was present in court (or non-in absentia). Additional analysis of all cases, both completed and still pending, also provides important context when looking at appearance rates for the most recent years.

### A Majority of Children Appear in Immigration Court

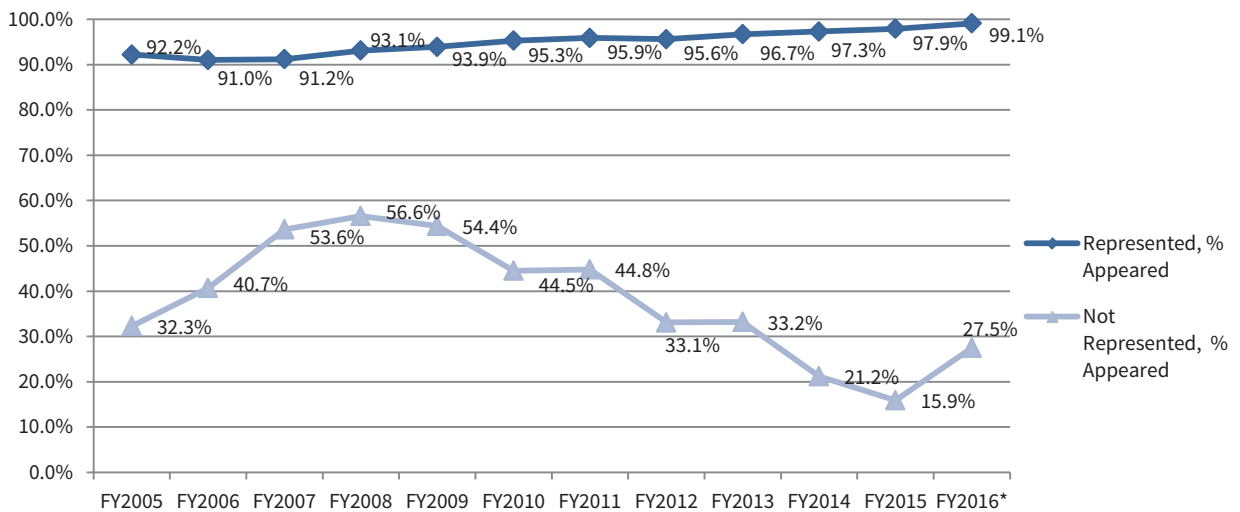
EOIR’s data shows that a majority of children appear when their case is decided in immigration court and that the *vast* majority of children represented by *lawyers* appear.<sup>5</sup>

- For completed cases overall, **67.6 percent** of children appeared in immigration court.
- **95.4 percent** of children represented by **lawyers** appeared for their court proceedings. This number is **historically consistent**; it has never fallen below 91 percent since FY 2005.

Figure 1: Share of Children Present in Immigration Court For Final Decision, FY 2005- March 2016

Represented	95.4%
Not Represented	33.4%
All Cases	67.6%

Figure 2: Share of Children Present in Immigration Court For Final Decision, FY 2005- March 2016\*  
Children With Representation Much More Likely to Appear

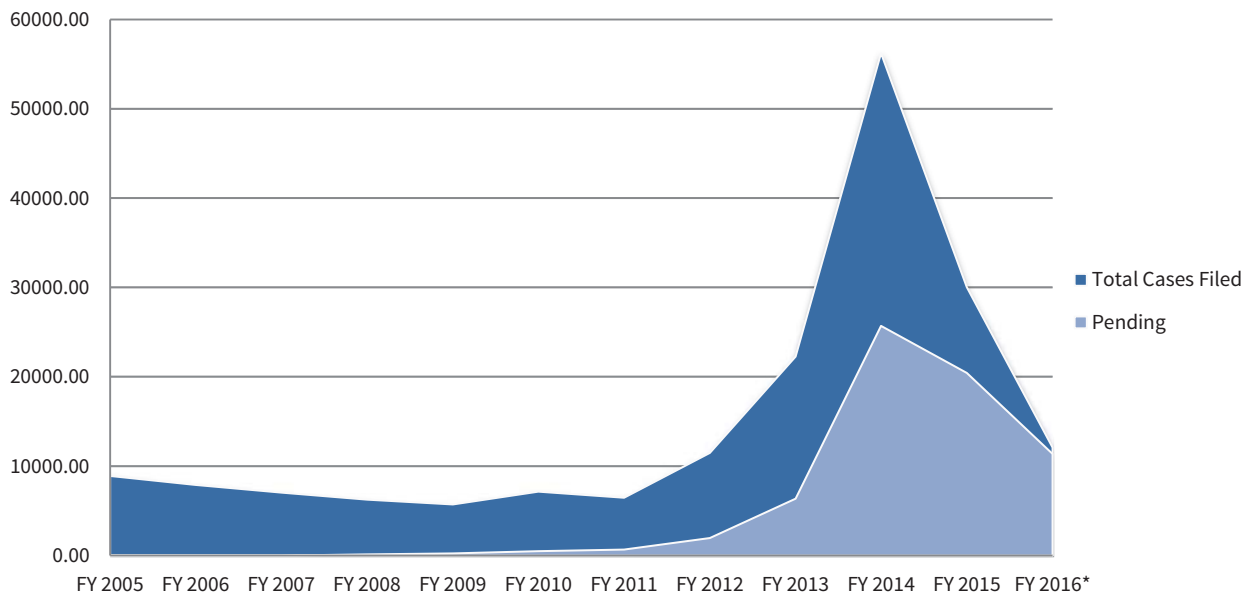


Source: EOIR Data on Juvenile Immigration Court Cases Presented by Syracuse University’s Transactional Records Access Clearinghouse (TRAC)

### In Recent Years, Appearance Rates In Unrepresented Cases Trended Downward as Pending Cases Trended Upwards—Causing High Rates of Incomplete Cases, which Skews Appearance Rates.

- A majority—75.6 percent— of cases initiated in 2015 and 2016 are currently pending. Moreover, 45.8 percent of cases filed in 2014 are still pending.
- *In absentia* decisions are typically issued more quickly than decisions in cases where a person appears for court. Therefore, it is likely that the *in absentia* decisions are front loaded for more recent years, skewing appearance rates.

Figure 3: Number of Children’s Cases Filed and Still Pending from FY2005 to March 2016: Significant Numbers of Cases Filed in Recent Years Remain Pending



Source: EOIR Data on Juvenile Immigration Court Cases Presented by Syracuse University’s Transactional Records Access Clearinghouse (TRAC)

### “Rocket Dockets” Likely Affected Appearance Rates

- In addition, the rate of *in absentia* orders may have increased in late 2014 and early 2015 due to government policies that made it difficult for children to appear. In the summer of 2014, EOIR decided to prioritize the cases of unaccompanied children and families with children in response to increased numbers of children fleeing violence in Honduras, Guatemala, and El Salvador. Children’s cases were conducted on an expedited schedule, or “rocket docket.”<sup>6</sup> These expedited dockets left children little time to find an attorney and led to some children being ordered removed even though they received very little or no notice at all of the date of their hearing.<sup>7</sup> These issues related to notice could help explain the significant number of *in absentia* orders in recent years.<sup>8</sup>

## Conclusion

EOIR's data suggests that children appear in immigration court—and that when children are represented by counsel, appearance rates are even higher. This data suggests that children who do fail to appear are victims of the system's deficits.<sup>9</sup> Given the relationship between representation and attendance, the appointment of counsel to children would help ensure attendance at proceedings in a more cost-effective, humane, and fair manner.<sup>10</sup>

## Endnotes

1. "Juveniles—Immigration Court Deportation Proceedings, Court Data through March 2016," *TRAC Immigration at Syracuse University*, last updated March 2016, <http://trac.syr.edu/phptools/immigration/juvenile/> [hereinafter TRAC, *Juveniles Tool*]. The data encompasses every immigration court case begun in these years, and coded by EOIR as "juvenile" "since FY 2005—181,538 cases in total. See "About the Data," *TRAC Immigration at Syracuse University*, last updated July 15, 2016, [http://trac.syr.edu/immigration/reports/359/include/about\\_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html). TRAC reports that, in the data, EOIR defines a "juvenile" as a child under 18 when their immigration case begins, and placed in immigration proceedings alone (defined as excluding children who the government has placed in immigration proceedings with a parent as a family unit). This data does not include children who are removed from the United States without the opportunity to go before an immigration court (such as Mexican children who are sent back to their home country immediately after arriving in the U.S., through a process called voluntary return).
2. Human Rights Watch, "Reducing the Immigration Court Backlog and Delays," February 2016, <http://www.humanrightsfirst.org/sites/default/files/HRF-Backgrounder-Immigration-Courts.pdf>.
3. "About the Data," *TRAC Immigration at Syracuse University*, last updated July 15, 2014, [http://trac.syr.edu/immigration/reports/359/include/about\\_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html).
4. 8 U.S. Code § 1229(b)(5).
5. We arrived at this result using TRAC's *Juveniles Tool*, by first calculating closed cases (all cases with an outcome other than "pending"), representation rates, and *in absentia* rates, by fiscal year.
6. See David Rogers, "Migrants' Right to Counsel Argued," *Politico*, September 3, 2014, <http://www.politico.com/story/2014/09/migrants-right-to-counsel-argued-110583>.
7. National Sign-On Letter to DHS, EOIR, and ORR Regarding Children Ordered Removed In Absentia Without Notice, February 9, 2015, <http://www.aila.org/advo-media/aila-correspondence/2015/sign-on-letter-children-removed-in-absentia>.
8. EOIR recently announced a change to this practice. Juan Osuna, the Director of EOIR, testified before the Senate Judiciary Committee on February 23, 2016 that, "On February 8, 2016, EOIR began docketing the initial master calendar hearing for DHS-designated unaccompanied children no earlier than 30 days and no more than 90 days from the immigration court's receipt of the NTA. This was a change from the initial 10-to-21-day guideline, and EOIR believes this greater scheduling flexibility will benefit both parties to the hearing by allowing them more time to prepare and providing respondents more opportunity to retain counsel, thereby furthering immigration court efficiency and diminishing the need for continuances." *The Unaccompanied Alien Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?* 114<sup>th</sup> Cong., 2 (February 23, 2016) (statement of Juan Osuna, Director of EOIR, <https://www.justice.gov/eoir/testimony-juan-p-osuna-us-senate-02232016>).
9. Dana Leigh Marks (President, National Association of Immigration Judges) in letter to Majority Leader Harry Reid and Minority Leader Mitch McConnell "Re: Special Concerns Relating to Juveniles in Immigration Courts," (July 22, 2014), <http://www.aila.org/infonet/naij-letter-to-senate-juveniles-in-imm-court>.
10. American Immigration Council, "Two Systems of Justice," March 2013, <http://www.immigrationpolicy.org/special-reports/two-systems-justice-how-immigration-system-falls-short-american-ideals-justice>.